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CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

O.A.No.1376/1995

New delhi, this the 4th day of October,1999.

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE SHRI S.P.BISWAS, MEMBER(A)

Shri Sukhbir Singh,
S/o Shri Jai Narayan,
Lorry Driver, presently working as Crane Operator,
Office of the Deputy General Manager,
Cable Construction, MTNL,
Department of Telecommunications,
Ministry of Communication,
Naraina, New Delhi.

... Applicant

(By Advocate Mr.K.R.Sachdeva)

vs.

1. Union of India, through
Chairman, Telecom Commission -cum-Secretary,
Department of Telecommunication,
Ministry of Communication,
Sanchar Bhawan,
20, Ashoka Road, New Delhi.

2. Chief General Manager, MTNL,
Delhi Telephones,
Khurshid Lal Bhawan,
New Delhi.

.. Respondents

(By Advocate Mr.V.K.Rao)

O-R D-E R (ORAL)

HON'BLE SHRI S.P.BISWAS, MEMBER(A):

The applicant is aggrieved by the respondents' inaction in not allowing him the salary of a Crane Operator, though he had officiated in that post for a shorter periods. It is the case of the applicant that he had worked in the capacity of a Crane Operator for the following periods:-

i) 17.1.84 to 30.4.1985

ii) 1.5.85 to 2.4.1986

iii) 21.2.89 till March 1997, when the Crane was declared as condemned.

2. The applicant has claimed salary in terms of the scale of pay applicable for a Crane Operator.
3. The respondents would submit that the applicant has been separately rewarded/compensated by means of paying him honorarium. Having received that, the applicant has no claim in agitating the receipt of salary meant for the post of Crane Operator.
4. The issue that falls for determination in this case is the legality of the applicant's claim for salary meant for a Crane Operator which is admittedly in the higher grade of Rs.1350-2200 vis-a-vis the scale Rs.950-1500 of the post of Lorry Driver held by the applicant.
5. The respondents do not deny that the Crane operator is in higher grade. However, they would deny the pay scale of the higher grade only on the basis that the applicant has been paid honorarium. It is in the context of the aforesaid details that we are required to decide the applicant's eligibility of salary for Crane Operator for the periods he had officiated in that capacity. The respondents have also taken yet another plea that the applicant could not be paid the salary for Crane Operator since there are no sanctioned posts of Crane Operator.
6. Applicant, in an attempt to draw support for his claim, has cited the case law in M.P.Paul vs. Union of India, (1995) 29 ATC 461. That was the case where the Tribunal after having discussed the eligibility of the applicants therein restricted the benefit to the period preceding 3 years prior to the regular appointment as Driver. The applicant therein, though a Group-D official had performed the duties as a Driver. The Hon'ble Supreme Court while dealing with a similar case in the case of Selvaraj vs. Lt.Governor of Island, Port Blair and others, JT 1998(4) SC 500, observed that when an official

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(Primary School Teacher) has been asked to look after the responsibilities of Secretary/Scout, the said official has to be paid the higher pay during the period he had undertaken responsibilities of a higher post. This principle stands reiterated by the Apex Court subsequently in the case of Secretary-cum-Chief Engineer, Chandigarh vs. Hari Om Sharma and others, 1998(5) SCC 87(3JJ). That was the case where the respondent was promoted as a stop gap measure and an undertaking was obtained from him that he would not claim salary of the higher post and other attendant benefits. Their Lordships held that:-

"An Agreement that if a person is promoted to the higher posts or put to officiate on that post or, as in the instant case, a stop-gap arrangement is made to place him on the higher post, he would not claim higher salary or other attendant benefits would be contrary to law and also against public policy ."

7. It is not in dispute that the applicant herein has worked exclusively as a Crane Operator for the periods mentioned in para 1. It is also not in dispute that the scale of pay of the Crane Operator is higher than the Lorry Driver. What has been paid to the applicant is only the honorarium. In terms of law laid down by the Apex Court, what was due to the applicant was the higher pay in the grade of Rs.1350-2200.

8. Keeping in view the position of law as well as the details aforesaid, we allow the O.A. with the following orders:

(a) Benefit of higher pay, i.e., scale of Rs.1350-2200 for the

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applicant will be restricted only for the periods mentioned in para 1 above minus the honorarium and salary already paid to him as Lorry Driver.

(b) The differences between the two, as per details in sub-para (a) above, shall be worked out and the amount shall be paid within a period of eight weeks from the date of receipt of a copy of this order.

(c) There is no order as to costs.



S.P. BISWAS
MEMBER (A)



A.V. HARIDASAN
VICE CHAIRMAN

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